

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION**

Heather Van Tassel,

Plaintiff,

v.

Palmer, Reifler & Associates, P.A. and  
James R. Palmer,

Defendants.

Civil Action No.: 8:08-CV-2872-RBH

---

**DEFENDANT’S NOTICE OF MOTION & MOTION TO DISMISS FRCP 12(b)(6)**

---

Pursuant to Federal Rules of Civil Procedure 12(b)(6), Defendants Palmer, Reifler & Associates, P.A. (“PRA”) and James R. Palmer (“Palmer”) hereby move this Court for an Order of Dismissal as to both of Plaintiff’s claims. This Motion is made as to both claims on the grounds that Plaintiff has failed to state a claim upon which relief can be granted.

Plaintiff’s first claim asserts that Defendants are in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* Relief cannot be granted as to this claim because the civil penalty, the collection of which was the subject of the letter transmitted by Defendants to Plaintiff, does not fall under the definition of “debt” in the Act. Therefore, the Complaint fails to state a claim under the Fair debt Collection Practices Act.

Plaintiff’s second claim asserts that Defendants are in violation of the Unfair Trade Practices Act, South Carolina Code §39-5-20. This claim is not one upon which relief can be granted because Defendants’ actions in sending a letter to Plaintiff attempting to collect a civil

penalty falls under an exemption to the Unfair Trade Practices Act. Therefore, the Complaint fails to state a claim under the Unfair Trade Practices Act.

This Motion is based on the attached Memorandum submitted in support hereof and the pleadings and records on file herein.

BRUNER, POWELL, ROBBINS, WALL  
& MULLINS, LLC

By: /s/ Warren C. Powell, Jr.  
Warren C. Powell, Jr., Fed ID 3138  
P.O. Box 61110  
Columbia, SC 29260  
(803) 254-5710  
wpowell@brunerpowell.com  
*Attorneys for Defendants*

Columbia, South Carolina  
October 20, 2008